

ASSEMBLY BILL

No. 641

Introduced by Assembly Member Hagman

February 25, 2009

An act to amend Section 10295 of, and to add Part 1.5 (commencing with Section 10000) to Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 641, as introduced, Hagman. Approval of contracts.

Existing law requires the Department of General Services to approve certain contracts entered into by a state agency, including contracts for the construction, alteration, improvement, repair, or maintenance of a property, or for the performance of work or services by the state agency for, or in cooperation with, any person or public body. Existing law provides that the Department of General Services is not required to approve, among other things, any contract let by the Legislature.

The bill would establish specified procedures for the Legislature in advertising for bids, accepting bids, and awarding contracts. The bill would require specified information to be verified under oath, thus imposing a state-mandated local program by expanding the scope of an existing crime.

This bill also would instead provide that the Department of General Services is not required to approve any contract let by the Legislature that is deemed to be an emergency, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Part 1.5 (commencing with Section 10000) is
2 added to Division 2 of the Public Contract Code, to read:

3
4 PART 1.5. CONTRACTING BY THE LEGISLATURE

5
6 CHAPTER 1. ADVERTISEMENTS FOR BIDS

7
8 10000. Public notice of a project shall be given by publication
9 once a week for at least two consecutive weeks or once a week for
10 more than two consecutive weeks if the longer period of advertising
11 is deemed necessary by the Legislature, as follows:

12 (a) In a newspaper of general circulation published in the county
13 in which the project is located, or if located in more than one
14 county, in such a newspaper in a county in which a major portion
15 of the work is to be done.

16 (b) In a trade paper of general circulation published in San
17 Francisco for projects located in County Group No. 1, as defined
18 in Section 187 of the Streets and Highways Code, or in Los
19 Angeles for projects located in County Group No. 2, as defined in
20 Section 187 of the Streets and Highways Code, devoted primarily
21 to the dissemination of contract and building news among
22 contracting and building materials supply firms.

23 The Legislature may publish the notice to bidders for a project
24 in additional trade papers or newspapers of general circulation that
25 it deems advisable.

26 10001. The notice shall state the time and place for the
27 receiving and opening of sealed bids, describing in general terms
28 the work to be done and that the bids will be required for the entire
29 project and for the performance of separate designated parts of the
30 entire project, if the Legislature determines that segregation is
31 advisable.

CHAPTER 2. BIDS AND BIDDERS

10010. (a) The Legislature may require prospective bidders to respond to questions contained in a standard form of questionnaire and financial statement, including a complete statement, of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which pleadings in civil actions are verified.

(b) If prequalification is required of any bidder on a contract, prequalification shall be required for all prospective bidders to that contract.

10011. (a) The Legislature may also require a prospective bidder to complete, under penalty of perjury, a standard form of questionnaire concerning the past safety record of each prospective bidder, any officer of that bidder, and any managing employee of that bidder. The Legislature may refuse to prequalify any prospective bidder who fails to submit a completed questionnaire, or for the reason that the information contained in the submitted questionnaire, or based on information otherwise known to the Legislature, that indicates an unsatisfactory safety record.

(b) The Legislature shall prescribe guidelines listing criteria that will be utilized administratively in determining an unsatisfactory safety record. A refusal by the Legislature to prequalify a prospective bidder shall be issued only after the Legislature has granted the bidder a hearing.

(c) This section shall in no way abridge or restrict the right of the Legislature to later determine whether the low bidder on a particular project is the lowest responsible bidder for purposes of award of the contract, including the holding of hearings thereon.

(d) The Legislature shall preapprove the standard form of questionnaire and the guidelines listing criteria that will be utilized administratively by the Legislature in determining whether a bidder has an unsatisfactory safety record.

10012. (a) The Legislature shall require all prospective bidders to complete, under penalty of perjury, a standard form of questionnaire inquiring whether that prospective bidder, any officer of that bidder, or any employee of that bidder who has a proprietary interest in that bidder, has ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal,

1 state, or local government project because of a violation of law or
2 a safety regulation, and, if so, to explain the circumstances.

3 (b) A bid may be rejected on the basis of a bidder, any officer
4 of that bidder, or any employee of that bidder who has a proprietary
5 interest in that bidder, has been disqualified, removed, or otherwise
6 prevented from bidding on, or completing a federal, state, or local
7 project because of a violation of law or a safety regulation.

8 10013. (a) The Legislature shall adopt and apply a uniform
9 system of rating bidders, on the basis of the standard questionnaires
10 and financial statements, in respect to the size of the contracts upon
11 which each bidder is qualified to bid. When bids for more than
12 one project are to be received at the same bid opening, the
13 Legislature may permit a bidder to submit bids for each project
14 within that bidder's prequalification rating, even though a rating
15 is insufficient to permit the bidder to be awarded the contract for
16 each project bid upon.

17 (b) In no event shall any bidder be awarded a contract if the
18 award of the contract would result in the bidder having, under
19 contract, work for which prequalification is required in excess of
20 that authorized by his or her prequalification rating. In determining
21 whether an award of a contract would result in a bidder having,
22 under contract, work in excess of that authorized by his or her
23 prequalification rating, the Legislature may use its estimated cost
24 of such contract rather than the amount of the bidder's bid. If the
25 Legislature determines that a bidder would be awarded the contract
26 for two or more projects but cannot be awarded the contract for
27 all such projects because of the inadequacy of his or her
28 prequalification rating, the Legislature shall determine which of
29 the bids of that bidder are to be accepted and the contract awarded
30 and which of the bids of the bidder are to be disregarded. In making
31 its decision the Legislature shall be guided by the combination of
32 contract awards that will result in the lowest total cost for the
33 projects involved.

34 10014. In all projects where federal funds are involved, no bid
35 submitted shall be invalidated by the failure of the bidder to be
36 licensed in accordance with the laws of this state. However, at the
37 time the contract is awarded, the contractor shall be properly
38 licensed in accordance with the laws of this state. The contract
39 shall not be awarded unless the Legislature has verified that the
40 contractor has a valid license in the appropriate classification for

1 the work performed. Any bidder or contractor that is not properly
2 licensed shall be subject to all legal penalties imposed by law,
3 including, but not limited to, any appropriate disciplinary action
4 by the Contractors State License Board. The Legislature shall
5 include a statement to that effect in the standard form of
6 prequalification questionnaire and financial statement. Failure of
7 the bidder to obtain proper and adequate licensing for an award of
8 a contract shall constitute a failure to execute the contract as
9 provided in Section 10031 and shall result in the forfeiture of the
10 security of the bidder.

11 10015. Information that is not a public record pursuant to the
12 California Public Records Act (Chapter 3.5 (commencing with
13 Section 6250) of Division 7 of Title 1 of the Government Code)
14 shall not be open to public inspection.

15 10016. The Legislature shall furnish to each bidder a standard
16 proposal form, that, when filled out and executed, may be
17 submitted as his or her bid. Bids not presented on forms so
18 furnished shall be disregarded. The Legislature shall not furnish
19 proposal forms to any person required to submit that has not
20 submitted a questionnaire and financial statement for
21 prequalification at least five days prior to the date fixed for publicly
22 opening sealed bids if that person has not been prequalified for at
23 least one day prior to that date.

24 10017. All bids shall be presented under sealed cover and
25 accompanied by one of the following forms of bidder's security:
26 cash, a cashier's check, certified check, or a bidder's bond executed
27 by an admitted surety insurer, made payable to the Legislature.
28 The security shall be in an amount equal to at least 10 percent of
29 the amount bid. A bid shall not be considered unless one of the
30 forms of bidder's security is enclosed with it.

31 10018. Whether or not bids are opened exactly at the time fixed
32 in the public notice for opening bids, a bid shall not be received
33 after the date fixed in the public notice for opening the bids.

34 10019. (a) A bid may be withdrawn at any time prior to the
35 time fixed in the public notice for the opening of bids only by
36 written request to the Legislature for the withdrawal of the bid.
37 The request shall be executed by the bidder or his or her duly
38 authorized representative. The withdrawal of a bid does not
39 prejudice the right of the bidder to file a new bid.

1 (b) This section does not authorize the withdrawal of any bid
2 after the time fixed in the public notice for the opening of bids.

3
4 CHAPTER 3. AWARD OF CONTRACTS
5

6 10030. On the day named in the public notice, the Legislature
7 shall publicly open the sealed bids and award the contracts to the
8 lowest responsible bidders.

9 10031. If the successful bidder fails to execute the contract,
10 his or her bidder's security shall be forfeited to the state. The cash
11 or proceeds shall be deposited in the fund out of which the expenses
12 of preparation and printing of the plans and specifications,
13 estimates of cost, and publication of notice are paid.

14 10032. (a) If the Legislature deems it is for the best interests
15 of the state, the Legislature may, on the refusal or failure of the
16 successful bidder to execute the contract, award the contract to the
17 second lowest responsible bidder.

18 (b) If the second lowest responsible bidder fails or refuses to
19 execute the contract, the Legislature may likewise award the
20 contract to the third lowest responsible bidder.

21 (c) On the failure or refusal of the second or third lowest bidder,
22 to whom a contract is awarded, to execute the contract, his or her
23 bidder's security shall be likewise forfeited to the state.

24 10033. The failure of the successful bidder to furnish any bond
25 required within the time fixed for his or her execution of the
26 contract, constitutes a failure to execute the contract.

27 10034. The bidders' security of the second and third lowest
28 responsible bidders may be withheld until the contract has been
29 finally executed. The cash, cashier's checks and certified checks
30 submitted by all other unsuccessful bidders shall be returned within
31 10 days after the contract is awarded, and the bidders' bonds shall
32 be of no further effect.

33 10035. If the Legislature deems the acceptance of the lowest
34 responsible bid or bids is not for the best interests of the state, after
35 stating the reasons for rejecting the bid or bids, the Legislature
36 may reject all bids and proceed by day's labor or advertise for
37 other bids in the manner required by this part.

38 SEC. 2. Section 10295 of the Public Contract Code is amended
39 to read:

10295. (a) All contracts entered into by any state agency for (1) the acquisition of goods or elementary school textbooks, (2) services, whether or not the services involve the furnishing or use of goods or are performed by an independent contractor, (3) the construction, alteration, improvement, repair, or maintenance of property, real or personal, or (4) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department. Every contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval.

(b) This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to in this section.

(c) This section does not apply to the following:

(1) Any transaction entered into by the Trustees of the California State University, by the Board of Governors of the California Community Colleges, or by a department under the State Contract Act or the California State University Contract Law.

(2) Any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code.

(3) Any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources.

(4) Any contract entered into by the Department of Personnel Administration for state employee benefits, occupational health and safety, training services, or combination thereof.

(5) Any contract let by the Legislature *that is deemed to be an emergency in accordance with Section 10340*.

(6) Any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O